

SERVED: November 6, 1992

NTSB Order No. EA-3714

UNITED STATES OF AMERICA  
NATIONAL TRANSPORTATION SAFETY BOARD  
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD  
at its office in Washington, D.C.  
on the 24th day of October, 1992

THOMAS C. RICHARDS,	)	
Administrator,	)	
Federal Aviation Administration,	)	
	)	
Complainant,	)	
	)	Docket SE-10843
v.	)	
	)	
J. L. CODY,	)	
	)	
Respondent.	)	
	)	

**OPINION AND ORDER**

Respondent appeals *pro se* from the oral initial decision of Administrative Law Judge John E. Faulk, issued in this proceeding on August 21, 1990 at the conclusion of an evidentiary hearing.<sup>1</sup>

The law judge affirmed an order of the Administrator issued on February 6, 1990 revoking respondent's private pilot certificate for an alleged violation of section 67.20(a)(1) of the Federal

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<sup>1</sup>A copy of the oral initial decision, an excerpt from the transcript, is attached.

Aviation Regulations (FAR), 14 C.F.R. Part 67.<sup>2</sup> However, the law judge dismissed, for want of evidence, a charge that the respondent had violated FAR section 61.15(a)(2).<sup>3</sup> The Administrator did not appeal the dismissal. On appeal, respondent's main contention appears to be that certificate revocation can not be based solely on a violation of 67.20(a)(1). Finding no merit in this or any other issue raised in his brief, we will deny the appeal.<sup>4</sup>

The alleged violation of FAR section 67.20(a)(1) was based on answers the respondent gave to questions on applications he submitted on August 28, 1985 and August 11, 1986 for second class airman medical certificates. On both applications, the respondent answered "no" to question 21W, inquiring about convictions other than traffic offenses. However, the Administrator adduced proof that respondent was convicted on June 7, 1979 in the United States District Court, Eastern District of Michigan for conspiracy to manufacture phencyclidine. The law

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<sup>2</sup>FAR section 67.20(a)(1) states, in relevant part:

"§ 67.20 *Applications, certificates, logbooks, reports, and records; Falsification, reproduction, or alteration.*

(a) No person may make or cause to be made--

(1) Any fraudulent or intentionally false statement on any application for a medical certificate under this part."

<sup>3</sup>The dismissed charge related to the Administrator's allegation that the respondent had been convicted in the United States District Court for the Central District of Illinois for conspiracy to distribute cocaine and of distribution of cocaine.

The law judge found that there was insufficient evidence to show that this conviction was final.

<sup>4</sup>The Administrator has filed a reply opposing the appeal.

judge therefore had an adequate basis on which to find, given the inconsistency between respondent's answers on the medical certificate applications and the evidence as to his conviction record, that respondent made an intentionally false statement within the meaning of the regulation.<sup>5</sup>

Although respondent contends that revocation should not have been sustained since one of the charges against him was dismissed, revocation for a violation of section 67.20(a)(1) is not contrary to Board precedent, *see, e.g., Administrator v. Barron*, NTSB Order EA-2215 (1985), and, in our judgment, no reason appears for not affirming that sanction here.<sup>6</sup>

In view of the foregoing, we find that safety in air commerce or air transportation and the public interest require affirmation of the Administrator's order, as modified by the law judge.

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<sup>5</sup>*See Hart v. McLucas*, 535 F.2d 516 (9th Cir. 1976).

<sup>6</sup>Respondent argues, among other things, that the Administrator's complaint was stale under 49 C.F.R. § 821.33. However, because the complaint alleged a lack of qualification of the certificate holder, it is not dismissable for staleness under the rule. *See* section 821.33(b)(1).

As to the remaining issues raised in respondent's brief, he has not identified why he believes they demonstrate error in the law judge's disposition of the case, and we perceive no basis in them for disturbing his judgment.

**ACCORDINGLY, IT IS ORDERED THAT:**

1. The respondent's appeal is denied;
2. The Administrator's order, as modified by the initial decision, and the initial decision are affirmed; and
3. The revocation of the respondent's private pilot certificate shall begin 30 days from the date of service of this order.<sup>7</sup>

VOGT, Chairman, COUGHLIN, Vice Chairman, LAUBER, HART and HAMMERSCHMIDT, Members of the Board, concurred in the above opinion and order.

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<sup>7</sup>For the purposes of this order, respondent must physically surrender his certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).